

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Hawkins)	Art Unit: 2623
)	
Serial No.: 10/802,589)	Examiner: Stronczer
)	
Filed: March 17, 2004)	50T5731.01
)	
For: SYSTEM AND METHOD FOR MULTIMEDIA)	May 8, 2009
PLAYLIST)	750 B STREET, Suite 3120
)	San Diego, CA 92101
)	

APPEAL BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

This brief is submitted under 35 U.S.C. §134 and is in accordance with 37 C.F.R. Parts 1, 5, 10, 11, and 41, effective September 13, 2004 and published at 69 Fed. Reg. 155 (August 2004). This brief is further to Appellant's Notice of Appeal filed herewith.

Table of Contents

<u>Section</u>	<u>Title</u>	<u>Page</u>
(1)	Real Party in Interest.....	2
(2)	Related Appeals/Interferences.....	2
(3)	Status of Claims.....	2
(4)	Status of Amendments.....	2
(5)	Summary of Claimed Subject Matter	2
(6)	Grounds of Rejection to be Reviewed.....	4
(7)	Argument.....	5
App.A	Appealed Claims	
App.B	Evidence Appendix	
App.C	Related Proceedings Appendix	

(1) Real Party in Interest

The real parties in interest are Sony Corp. and Sony Electronics Inc.

(2) Related Appeals/Interferences

No other appeals or interferences exist which relate to the present application or appeal.

(3) Status of Claims

Claims 1, 2, and 4-15 are pending and finally rejected, and claims 3 and 16-22 have been canceled.

All rejections of all pending claims are appealed.

(4) Status of Amendments

No amendments are outstanding.

(5) Summary of Claimed Subject Matter

As an initial matter, it is noted that according to the Patent Office, the concise explanations under this section are for Board convenience, and do not supersede what the claims actually state, 69 Fed. Reg. 155 (August 2004), see page 49976. Accordingly, nothing in this Section should be construed as an estoppel that limits the actual claim language.

Claim 1 recites a system for generating a playlist of multimedia titles that includes a database (e.g., any one of the databases 16-26, figure 1; page 6) and a digital processor (e.g., any one of the server 12, figure 1; page 5, line 5 or processors 36, 38, figure 1; page 8, lines 16-18) accessing the database and configured

for communicating with a client device (14, figure 1; page 5, line 6) over a network. The processor executes logic including accessing a database containing data representing heterogenous multimedia content (40, figure 2; page 8, last line) and then generating plural search vectors by accessing a database containing demographic data (e.g., 54, figure 3; page 11, line 2). Using the search vector, the processor generates plural playlists and associates the playlists with respective consumers (page 11, last three lines), such that the consumers can access their respective playlists over the network. Each playlist is uniquely associated with a respective consumer whose profile was used to generate the playlist (page 11, last three lines). A playlist for a respective consumer is recalled based on a consumer ID identifying the consumer (figure 5; page 13) and the playlist presented on a client device associated with the respective consumer. The processor also receives a selection from the playlist and processes the selection by transmitting to the client device a multimedia stream corresponding to the selection (figure 5 and pages 11-13).

Claim 5, on the other hand, sets forth a system for generating a playlist of multimedia titles that includes a database (e.g., any one of the databases 16-26, figure 1; page 6) and a digital processor (e.g., any one of the server 12, figure 1; page 5, line 5 or processors 36, 38, figure 1; page 8, lines 16-18) and configured for communicating with a client device (14, figure 1; page 5, line 6) over a network. The processor accesses a database containing data representing heterogenous multimedia content (40, figure 2; page 8, last line) and generates a search vector by accessing a database containing data selected from the group consisting of third party marketing data, demographic data, consumer profile data, and consumer search history data (e.g., 54, figure 3; page 11, line 2). Using the search vector, a playlist is generated and associated with the consumer, such that the consumer can access the playlist over the network, page 11, last three lines. The

processor signifies whether all content in the playlist is available for playback (playlist is "ready") or is pending (playlist is "incomplete") (page 14, lines 4-7).

Claim 8 sets forth a method for generating a multimedia playlist for display thereof to a consumer operating a client device (14, figure 1; page 5, line 6) communicating with a network. The method includes accessing profile data associated with the consumer (e.g., 48, figure 3; page 10, line 18), accessing historical search and purchasing data (e.g., 50/52, figure 3; page 10, line 20), and retrieving historical search and purchasing data based on the profile data associated with the user (54, figure 3; page 11, lines 1-5). Using retrieved historical search and purchasing data, a search (56, figure 3; page 11, second paragraph) is undertaken for multimedia content, with the multimedia content not being constrained to be homogenous (page 6, lines 4 and 5). A playlist is generated based on the search, page 11, last three lines.

(6) Grounds of Rejection to be Reviewed on Appeal

a. Claims 1, 2, and 4 have been rejected under 35 U.S.C. §103 as being unpatentable over Pontenzone et al., USPP 2002/0152278 in view of Hori et al., USPN 7,209,942.

b. Claims 5-7, of which Claim 5 is independent, have been rejected under 35 U.S.C. §103 as being unpatentable over Pontenzone et al. in view of Asmussen et al., USPP 2002/0042923 and Hempleman et al., USPN 6,243,725.

c. Claims 8-12 and 15, of which Claim 8 is independent, have been rejected under 35 U.S.C. §103 as being unpatentable over Pontenzone et al. in view of Asmussen et al. and Holtz, USPP 2002/0053078.

d. Dependent Claims 13 and 14 have been rejected under 35 U.S.C. §103 as being unpatentable over Pontenzone et al. in view of Asmussen et al., Holtz, and Hempleman et al.

(7) Argument

Anticipation Rejection of Claims 1, 2, and 4

Pontenzone is directed to allowing listeners to manage a song playlist for a publicly broadcast radio station. The songs on the playlist, but not the playlist itself, may be unicast or multicast, paragraph 27; the playlist, once established, is validated to ensure it meets certain rules and then the songs may be broadcast on a station, paragraph 63. When a station has more than one playlist, only one is active, paragraph 64; importantly, an active playlist can't be edited, quite plainly meaning that a user cannot randomly select a song from a playlist as desired and indeed as envisioned by Pontenzone's teaching that, for example, one rule may be prohibiting the playing of three consecutive songs in a row by the same artist, paragraph 63.

With this overview of Pontenzone in mind, the errors in the present rejection become manifest. Specifically, on page 3 of the Office Action the presentation of the playlist on the client device is said to be "inherent"; the limitations of receiving a selection from the playlist and processing the selection by transmitting to the client device a multimedia stream corresponding to the selection are not even mentioned, since as analyzed above Pontenzone does not in fact allow editing of an active playlist and thus teaches away from Claim 1.

To establish anticipation, a single reference must expressly or inherently describe each and every element of a claim, In re Bond, 910 F.2d 831, 832 (Fed. Cir. 1990). To be "inherent" an otherwise

undescribed feature must "necessarily" be part of a reference, In re Roberston, 169 F.3d 743, 745 (Fed. Cir. 1999). Because as stated above it is manifest that Pontenzone fails to teach at least two elements of Claim 1, the rejection is clearly erroneous. In addition or alternatively, because the allegedly "inherent" elements of recalling a playlist for a respective consumer based on a consumer ID identifying the consumer and then presenting the playlist on a client device associated with the respective consumer are not "necessarily" in Pontenzone, the rejection is clearly erroneous.

Obviousness Rejection of Claims 5-7

Claim 5 requires the processor to signify whether all content in the playlist is available for playback (playlist is "ready") or is pending (playlist is "incomplete"). This has been rejected based on a teaching in Pontenzone that at best is oblique to Claim 5, namely, that Pontenzone ensures that songs are playable in all required formats. The Board will readily see the error here. Validating that a song on a playlist conforms to all required formats is not at all a signal of whether a playlist is ready or incomplete, but rather merely an indication as to whether any song in isolation has satisfied the validation criteria. It is difficult to reconcile the apple of Pontenzone with the orange of Claim 5 except by accounting for impermissible hindsight cherry picking, which is clear error under KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727 (2007) (noting the need to guard against hindsight reconstruction).

Obviousness Rejection of Claims 8-12 and 15

Independent Claim 8 continues to recite that the multimedia content is not constrained to be homogenous. The Office Action fails to mention this limitation and indeed, all of Pontenzone's playlist titles

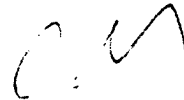
must be audio since they are broadcast over radio stations. Because this rejection fails to account for a claim limitation, and indeed because Pontenzone expressly teaches a system that requires its titles to be constrained to homogeneous audio content, the rejection is clear error.

With particular regard to Claims 9, 11, and 12, the examiner once again relies on inherency without recognizing that Pontenzone may very well constrain the client device to be a particular single type of device (and thus not *necessarily* require Claim 9). The examiner also fails to recognize that Pontenzone simply plays songs from playlists, and that it consequently need not "necessarily" allow the consumer to share the playlist with other users on the network (Claim 12).

Obviousness Rejection of Claims 13 and 14

These claims inherit the patentability of their base claim.

Respectfully submitted,



John L. Rogitz
Registration No. 33,549
Attorney of Record
750 B Street, Suite 3120
San Diego, CA 92101
Telephone: (619) 338-8075

JLR:jg

APPENDIX A - APPEALED CLAIMS

1. A system for generating a playlist of multimedia titles, comprising:
 - at least one database;
 - at least one digital processor accessing the database and configured for communicating with a client device over a network, the processor executing logic including:
 - accessing at least one database containing data representing heterogenous multimedia content;
 - generating plural search vectors by:
 - accessing at least one database containing demographic data;
 - using the at least one search vector, generating plural playlists and associating the playlists with respective consumers, such that the consumers can access their respective playlists over the network, wherein each playlist is uniquely associated with a respective consumer whose profile was used to generate the playlist;
 - recalling a playlist for a respective consumer based on a consumer ID identifying the consumer;
 - presenting the playlist on a client device associated with the respective consumer;
 - receiving at least one selection from the playlist; and
 - processing the selection by transmitting to the client device a multimedia stream corresponding to the selection.
2. The system of Claim 1, wherein the playlist is not specific to a particular client device.

4. The system of Claim 1, wherein the playlist is stored on the network, such that the consumer can share the playlist with other users on the network.

5. A system for generating a playlist of multimedia titles, comprising:

at least one database;

at least one digital processor accessing the database and configured for communicating with a client device over a network, the processor executing logic including:

accessing at least one database containing data representing heterogenous multimedia content;

generating at least one search vector by undertaking at least one of:

accessing at least one database containing data selected from the group consisting of third party marketing data, demographic data, consumer profile data, and consumer search history data; and

using the search vector, generating a playlist and associating the playlist with the consumer, such that the consumer can access the playlist over the network, wherein the logic comprises signifying whether all content in the playlist is available for playback (playlist is "ready") or is pending (playlist is "incomplete").

6. The system of Claim 5, wherein the logic comprises recording billing of the consumer in a database communicating with the network.

7. The system of Claim 1, wherein the logic comprises generating the search vector based on a search command received from the consumer, the search vector being stored in at least one database on the network.

8. A method for generating a multimedia playlist for display thereof to a consumer operating a client device communicating with a network, comprising:

accessing profile data associated with the consumer;

accessing historical search and purchasing data;

retrieving historical search and purchasing data based on the profile data associated with the user;

using retrieved historical search and purchasing data, searching for multimedia content, the multimedia content not being constrained to be homogenous; and

generating a playlist based on the searching act.

9. The method of Claim 8, comprising presenting the playlist to the consumer using a client device communicating with the network without constraining the client device to be a particular single type of device.

10. The method of Claim 8, further comprising generating a playlist using a consumer search command.

11. The method of Claim 10, wherein the playlist is stored in a database on the network.
12. The method of Claim 8, wherein the playlist is stored on the network, such that the consumer can share the playlist with other users on the network.
13. The method of Claim 8, comprising allowing a user to select a title from the playlist and if metadata associated with the title indicates a billable event, billing the user for downloading content associated with the title.
14. The method of Claim 13, comprising recording billing of the consumer in a database communicating with the network.
15. The method of Claim 8, comprising generating a search vector based on a search command received from the consumer, the search vector being stored in at least one database on the network.

CASE NO.: 50T5731.01
Serial No.: 10/802,589
May 8, 2009
Page 12

PATENT
Filed: March 17, 2004

APPENDIX B - EVIDENCE

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004, page 49978.))

CASE NO.: 50T5731.01
Serial No.: 10/802,589
May 8, 2009
Page 13

PATENT
Filed: March 17, 2004

APPENDIX C - RELATED PROCEEDINGS

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004, page 49978.)